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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/518,756	03/03/00	EVERETT R	13,507.2

IM22/1003

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EXAMINER	
TORRES VELAZQUEZ,N	
ART UNIT	**PAPER NUMBER**
1771	2

DATE MAILED: 10/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

PTO-90C (Rev. 2/95)

1- File Copy

Office Action Summary	Application No.	Applicant(s)	
	09/518,756	EVERETT ET AL.	
	Examiner	Art Unit	
	Norca L. Torres-Velazquez	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1)☒ Responsive to communication(s) filed on *03 March 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some * c)☐ None of the CERTIFIED copies of the priority documents have been:

1.☐ received.

2.☐ received in Application No. (Series Code / Serial Number) _____ .

3.☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-22 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-22 of copending Application No. 09/096,653. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by BEWICK-SONNTAG et al. (US Patent 5,762,641).

BEWICK-SONNTAG et al. discloses an absorbent article comprising a liquid pervious topsheet, a liquid impervious backsheet, and an absorbent core. (Column 9, lines 23-26). The absorbent core comprises: a first structure comprising an upper layer comprising a first fibrous material and a first superabsorbent material, the absorbent core also comprises a second structure

comprising a second fibrous material and a second superabsorbent material. (Column 3, lines 1-10). BEWICK-SONNTAG et al. also teaches that the first structure can comprise first particulate super-absorbent mixed with the first fibrous material as a substantially homogeneous upper layer, but preferably some of the super-absorbent is present in a distinct layer below the upper layer of first fibrous material. The second or storage-structure can comprise a mixture of the second fibrous material and the second superabsorbent material. Preferably, they are present in distinct layers. (Column 4, lines 27-36).

The limitation of having a Liquid Wicking Value of at least about 38% in one of the first and second primary layer regions fails to provide patentable distinction over the prior art. The prior art is found to disclose each chemical and structural feature instantly claimed, therefore it must meet the property requirement specified, otherwise, applicant's claim is incomplete. Note ex parte Slob (157 USPQ 172) which supports this position. The same applies to claims 7-8.

As for Claim 4, the Combined Conductance-Wicking Value is inherent from the structure in the independent claim.

As for Claim 6, BEWICK-SONNTAG et al. also teaches that the first structure is intended to be positioned toward a wearer's body in use.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 2-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over BEWICK-SONNTAG et al. (US Patent 5,762,641).

BEWICK-SONNTAG et al. discloses an absorbent article that teaches the limitations of the independent claim 1 as described in line 2 of this action. However, the reference does not disclose the thickness or the crotch width of the absorbent core.

However, where the general conditions of a claim are met, mere changes in size and shape have been held to be within skill of the art dependent only on the desired end use of the article claimed, *In re Rose, 105 USPQ 237; In re Dailey, 149 USPQ 47.*

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent article disclosed by BEWICK-SONNTAG et al. to have the desired thickness and crotch width.

7. Claims 9-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over TANZER et al. (US Patent 5,562,645).

TANZER et al. discloses an article comprising a backsheet layer, a liquid permeable topsheet layer and an absorbent structure which is interposed between the backsheet layer and topsheet layer. (Column 26, lines 12-17). TANZER et al. also discloses that the article includes a plurality of fibrous web layers, a retention portion having particles of superabsorbent material.

TANZER et al. teaches that the fibrous web layer can have a basis weight of at least about 60 gsm, and a density of not more than about 0.25gm/cc. The fibrous web layer can have a fiber content in which at least about 90 wt% of the fibers are composed of fibers having a fiber length of not more than about 0.4 inch. (Abstract)

In Figure 1, TANZER et al. show, topsheet 28 and backsheet 30 that may be generally coextensive, and may have length and width dimensions which are generally larger than the corresponding dimensions of the absorbent structure 32. (Column 4, lines 58-61).

TANZER et al. also teaches the use of binder material in the fibrous web layer (Column 27, lines 5-12), and the use of particles of super-absorbent material (Column 28, lines 2-4). However, the reference does not disclose the longitudinal or lateral extent of the layer regions of the article.

However, where the general conditions of a claim are met, mere changes in size and shape have been held to be within skill of the art dependent only on the desired end use of the article claimed, *In re Rose, 105 USPQ 237; In re Dailey, 149 USPQ 47.*

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article disclosed by TANZER et al. to have the desired longitudinal or lateral extents of the layer regions in the article.

Applicant's ranges for the limitations of basis weight, region density, content of fibrous and superabsorbent material and fiber sizes, are broad and encompass typical values that are found in prior art. Further each of the elements are recognized as result effective variables in this field of endeavor and it has been held that discovering optimum values would have been of result effective variables involves only routine experimentation.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

YANG (US 5525407)

MELIUS ET AL (US 5601542)

NOEL ET AL (US 5439458)

PALUMBO ET AL (US 5728084)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 7:30-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3599 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

nlt
September 28, 2000

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700